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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1932.

No. 274

CO-ORDINATED TRANSPORT, INC. OF ILLINOIS, a corporation, *et al.*,

Appellants,

vs.

EDWARD J. BARRETT as Secretary of State of the State of Illinois, *et al.*,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

RESPONSE OF APPELLEES TO APPELLANTS' PETITION FOR REHEARING.

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We believe the only point raised in Appellants' Petition for Rehearing which merits a response is the contention (Petition for Rehearing, Point I) that the record in this case does not support the statement at page 2 of the majority opinion to the effect "that each of the interstate carriers does an intrastate business as well". The fact is that on the record in this cause the Court could have reached no other conclusion.

From beginning to end this case has been tried upon the theory that all plaintiffs are engaged in intrastate operations and that some, in addition, engage in interstate trucking. In the Appellees' brief in this Court we urged this

fact in support of our argument that appellants had no standing to challenge the tax under the Commerce Clause (Brief of Appellees, 11-14). In their reply brief appellants did not deny the correctness of our factual statement but tacitly admitted the same to be true as follows (Appellants' Reply Brief, 6):

> "The *Freeman* case is a complete answer to appellees' contention that because the appellants are engaged in intrastate operations they are therefore in no position to urge that the Illinois taxes amount to an unlawful burden upon their interstate operations."

The Court will recall that at the oral argument in this cause counsel for the State, in response to a question from the bench, stated that all plaintiffs who engaged in interstate operations were also engaged in intrastate operations. Counsel for appellants did not challenge the statement.

Now, for the first time in the entire course of this litigation, appellants attempt to show that "certain" of the plaintiffs are engaged wholly in interstate activities. They support their argument by singling out only two of the fifty-four plaintiffs—namely, Cecil Kain and Russell Young. An examination of the record discloses the utter lack of factual support for appellants' contention.

The verified complaint in this cause contains the following allegations with respect to plaintiff Kain (R. 3):

> "The plaintiff, Cecil Kain, is a resident of Kane County, Illinois, and the owner of one tractor, a vehicle of the Second Division, as defined in sections 1 and 2 of the Motor Vehicle Law of the State of Illinois. Said plaintiff uses said tractor for the transportation of property *in intrastate commerce* within the State of Illinois and in interstate commerce between the State of Illinois and other States, and in so doing operates upon the highways in Kane County, Illinois, and elsewhere in Illinois and in other states." (Emphasis supplied.)

This allegation was admitted by the answer filed on behalf of the appellees (R. 20). The testimony with respect to Kain's operations was exceedingly brief (R. 69-70) and it does not support appellants' assertion (Petition for Rehearing, page 2) that all of the mileage traveled in Illinois was in the course of interstate commerce. Only by making factual assumptions not found in the testimony can it be concluded that Kain's operations were wholly interstate. In any event, appellants' present contentions with respect to this plaintiff are directly contrary to the facts as alleged in their sworn complaint.

On December 10, 1951 the trial court entered an order permitting the joinder of certain additional parties plaintiff and permitting the complaint previously filed to stand as the complaint of the additional plaintiffs (R. 33). Among the plaintiffs so added was Russell Young. The motion for leave to join recited (R. 30-31):

> "Now come . . . Russell M. Young; . . . all residents of the State of Illinois and doing business in said State, all of whom are engaged as carriers by motor vehicle in the transportation of property *in intrastate* commerce within the State of Illinois and interstate commerce between the State of Illinois and other states; . . ." (Emphasis supplied).

The testimony of Young, like that of Kain, was brief (R. 65-68). We submit that a fair reading of Young's testimony supports the allegations of his motion for leave to join as a party plaintiff for he testified that "fourteen to sixteen trucks operate solely within the City of Chicago" (R. 66).

All other matters raised in the Petition for Rehearing were fully briefed and argued in the course of the original hearing of this cause and, we submit, require no further comment. We urge, therefore, that appellants' petition

raises no issues requiring additional consideration by the Court and that accordingly the Petition for Rehearing should be denied.

Respectfully submitted,

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